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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/574,948

Filing Date: April 07, 2006

Appellant(s): STICH ET AL.

Weiwei Y. Stiltner (Reg. No. 62,979)
For Appellants

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 19, 2011 appealing from the Office action mailed March 16, 2011.

(1) Real Party in Interest

A statement identifying by name the real party is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellants' statement of the status of amendments after final contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellants' statement of the grounds of rejection to be reviewed on appeal set forth in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|--------------------|----------------------|--------|
| US 2002/0133814 A1 | Bourke-Dunphy et al. | 9-2002 |
| US 2002/0129356 A1 | Hellerstein et al. | 9-2002 |

(9) Grounds of Rejection

The following ground(s) of rejection, set forth in the Office action dated March 16, 2011 and incorporated herein, are applicable to the appealed claims:

- **Claims 1-5 and 11-13 stand finally rejected under 35 USC § 101 because claimed invention is directed to non-status subject matter.**

As to claim 1, recites to include, "A system for automatically...where the system comprises: a system planning tool for ...wherein the system planning tool includes: a user interface for transmitting... the planning logic ... and the data management unit and the system component for ... such that ... when configured, form the system" does not comprise any hardware component (no physical transformation) in order to *realize the functionality* of the system. The "system" without such hardware component may be broadly interpreted as data structures representing descriptive material per se or computer programming representing computer listing per se – functional descriptive material under 35 USC § 101. See MPEP 2106.01(I).

Claims 2-5 and 11-13 recite the limitations that do not cure the deficiency of the base claim 1, which regarding to the rejection of non-statutory under 35 USC 101. Therefore, they are also rejected for the same reason.

- **Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourke-Dunphy et al. (US 2002/0133814 A1 made of record, hereinafter Bourke-Dunphy) in view of Hellerstein et al. (US 2002/0129356 A1 made of record, hereinafter Hellerstein).**

As per claims 1 and 6, Bourke-Dunphy discloses a method for automatically installing and configuring functionalities, stored in installation, verification and/or configuration files, for system components arranged in a distributed network, where a system planning tool is used to create, check and configure the installation, verification and/or configuration files for the respective system components – (e.g. *system and method 10 of Fig. 1 for planning an installation procedure to a plurality of application and/or service components on which computer or computers each selected component is to be installed – see at least [0005], [0007], and [0022]*),

wherein the system planning tool comprises a user interface, a data management unit, and a planning database -- (e.g. *system 10 of fig. 1 – see at least [0023]*), in which

the user interface transmits selected system options to the planning logic unit and to the data management unit – (e.g. *the identified components is selected for installation on one or more components via user interface such as user interface 12 of Fig. 1, wherein an installation procedure is determined based on dependency requirement for the components that are selected for installation – see at least [0007],[0023], [0031], [0054], [0075] with emphasis added.*),

the planning logic unit uses a data and rule manager integrated in the data management unit to produce installation, verification and/or configuration plans from the system options, the installation, verification and/or configuration plans for further processing in the data management unit – (e.g. *the user interface 12 is operatively associated with a dependency engine 14 for determining whether the component*

selections violate any dependency rules dependency data 16 – see at least [0007], [0008], [0058]-[0059], and [0076-0077] with emphasis added), and

the installation, verification and/or configuration files specified in the respective system components are automatically installed, checked and configured in the respective system component in a prescribed order and manner, and

the system components are configured to form an overall system - *(e.g. install software to select computers in an order within common network domain See at least [0079-0080] with emphasis added)*.

It is to note that, while Bourke-Dunphy discloses the data management unit uses an integrated data generator to generate and configure – *(e.g. generating installation procedure 18 – see at least [0026])* but does not explicitly disclose the data management unit uses an integrated data generator to generate and configure *software packages* that are dependent on each other, the software packages comprising installation, verification and/or configuration files from the system options in the user interface, system information stored in the planning database, and the installation, verification and/or configuration plans produced by the planning logic unit, and ascertains installation steps for transmitting functionalities stored in the installation, verification and/or configuration files of the software packages to system components; However, Hellerstein, in an analogous art, discloses,

“Computer-based methods and systems for performing automated distribution of a software package to one or more target machines in one or more regions of a distributed network of target machines, comprises the following steps. First, a base software package is prepared for each of the one or more regions based on at least one of: (i) policy data indicating which of the one or more regions are candidates for receiving the software package, (ii) dependency information indicating requisites for a

service provided by the software package, and (iii) configuration information for each of the candidate regions. The base software package is then distributed to each of the candidate regions of the distributed network. The base software package received at each of the candidate regions is then customized based on at least one of: (i) regional distribution policies, (ii) dependency information specific to one or more roles performed by the target machines in that region, and (iii) individual target machine configuration information. Lastly, the software package customized in each of the candidate regions is distributed to at least one of the target machines in the candidate regions of the distributed network. ...the basic service (software) package 504 is the component that is a candidate for installation in the appropriate target machines...when a region server, responsible for distributing a package to each of the end points within its domain, receives a base service package 522, it needs to augment it with specific dependency items that are needed by the individual machines within the region. This is done by a region package augmentor operation 520, which receives as input the regional distribution policies 528, the dependency information 524 specific to the machines in that region, and individual machine configuration information 526 that will be used to customize the base package for each of the target machines. The output is a set of customized packages 530 that is produced for each group of machines within the region, having the same installation environment. --See Hellerstein, at least Abstract, [0052], and [0053] with emphasis added.

Thus, it would have been obvious to one ordinary skill in the art at the time invention was made to use customized package preparation of Hellerstein in installation procedure 18 of *planning an installation system* of Bourke-Dunphy for automatically installation of the customized package to one or more computer within distribution network and ease the burden of installation from administrator or user as seen in Hellerstein (e.g. [0005] and [0010]).

Further regarding to claim 1, Bourke-Dunphy discloses a system – (e.g. *computer 302 of Fig. 7 and [0072]*) for automatically implementing method as of claim 1 above.

As per claims 2 and 7, modified Bourke-Dunphy with Hellerstein discloses wherein following the configuration of the system components and operational overall system is formed – See *Bourke-Dunphy, at least [0074]*.

As per claims 3, 8, 11, and 14, modified Bourke-Dunphy with Hellerstein discloses wherein the functionalities stored in installation, verification and/or configuration files are in the form of software packages – (e.g., customized packages 530-- *See Hellerstein, at least, [0053] and Fig. 5B, with emphasis added.*

As per claims 4, 9, 12, and 15, modified Bourke-Dunphy with Hellerstein discloses wherein the overall system is in the form of a distributed network – (*e.g. identified computers interconnected within a common network – see Bourke-Dunphy at least, [0074]*).

As per claims 5, 10, 13, and 16, modified Bourke-Dunphy with Hellerstein discloses wherein the software packages are used to store system component data and setup data for the system components -- (*e.g. individual machine configuration information 526 used to customize the base package for each of the target machines that are output a set of customized packages 530--See Hellerstein, at least Abstract, [0052], and [0053] with emphasis added*).

(10) Response to Arguments

The Rejection of claims 1-5 and 11-13 under 35 USC § 101 (Brief, pages 7-8)

Claim 1

In appellants' brief, as of independent claim 1, appellants argue that,

"Appellants' claim 1 specifically recites a system for automatically installing, verifying and/or configuring functionalities stored in files for components connected in a distributed network. Such a claimed system is structural, and clearly recites specific application and improvement to technology. Claim 1 is not an abstract idea." – See *Brief*, page 8, ¶ 2, which Examiner respectfully disagrees.

First of all, Appellants are appeared to mischaracterize Examiner's previous rejection regarding to "system" to be "an abstract idea"; however, as in the previous Office action (*page 4, ¶ 4 and page 5, ¶ 1*), discloses,

'[As to claim 1, recites to include, "A system for automatically...where the system comprises: a system planning tool for ...wherein the system planning tool includes: a user interface for transmitting... the planning logic ... and the data management unit and the system component for ... such that ... when configured, form the system" does not comprise any hardware component (no physical transformation) in order *to realize the functionality* of the system. Examiner interprets these elements (i.e. "system planning tool", "user interface", "planning logic unit", "data management unit") of the claimed system as software only, which is functional descriptive material. Claim 1 does not recite any computer hardware (i.e. recording the functional descriptive material on computer readable medium).

Therefore, the "system" including functional descriptive material (software) without such **hardware component** is nonstatutory – functional descriptive material under 35 USC § 101. See MPEP 2106.01], (*with emphasis added*).

As can be seen, the "system" as recited in independent claim 1 above, was rejected as "computer programming representing computer listing per se – functional descriptive material under 35 USC § 101". Accordingly, the appellants' above argument

that, the "system" as recite in claim 1 is "structural and clearly recites specific application and improvement to technology" is irrelevant and is not persuasive.

Furthermore, as have been addressed in the previous Office action (pages 3-4),

' "As to claim 1, it is merely recites to include, "A system for automatically...where the system comprises: a system planning tool for ...wherein the system planning tool includes: a user interface for transmitting... the planning logic ... and the data management unit and the system component for ... such that ... when configured, form the system" does not comprise hardware component (no physical transformation) in order to realize the functionality of the system. The "system" without such hardware component may be broadly interpreted as data structures representing descriptive material per se or computer programming representing computer listing per se – functional descriptive material under 35 USC § 101. See MPEP 2106.01(I).

Furthermore, the amended limitation, "...for respective system components that are network node in the distribute network" and "the system component for automatically checking and configuring specified installation ... such that the system components, when configured, form the system" *with emphasis added*.

As can be seen with underline from above, the claim limitation "for" and "such that... when configured..." **are intentional use** and **does not imply** that "system" comprise **any hardware as noted** above. Thus, Applicants argument is no persuasive." (emphasis added)

Accordingly, the "system" as recited in claim 1 are broadly interpreted as " data structures representing descriptive material per se or computer programming representing computer listing per se – functional descriptive material under 35 USC § 101.

Claims 2-5 and 11-13 recite the limitations that do not cure the deficiency of the base claim 1, which regarding to the rejection of non-statutory under 35 USC 101.

Therefore, they are also rejected for the same reason.

The Rejection of Claims 1-16 under 35 U. S. C. § 103 (Brief, pages 8-

10)

Claim 1

As to claim 1, Appellants content that,

"[B]ourke-Dunphy And Hellerstein Fail to Disclose Appellants' Claim 1 System Planning Tool Comprising the "Data Management Unit" for Generating Software Packages for Installation in System Components and the "System Components" for Automatically Checking and Configuring Specified Installation, Verification and/or Configuration Files in a Prescribed Order and Manner, Such That the System Components, When Configured, Form the System." – *See Brief, page 8, ¶ 4*, which examiner respectfully disagrees.

On p. 10, lines 1-2, appellant argues the prior art does not teach "data management unit as presently claimed for producing the 'system components' as presently claimed". Examiner respectfully notes that the claims do not recite these features. Claim 1, recites "data management unit being configured for using an integrated data generator to generate and configure software packages being dependent on each other, the software packages" (lines 15 – 24) and the "system components for automatically checking and configuring specified installation, verification and/or configuration files in a prescribed order and manner" (lines 27 – 30). The claims require the data management unit to generate software packages that include installation, verification and/or configuration files and the system components automatically checking and configuring specified installation, verification and/or configuration files. However, the "system components" are not generated by the data management unit.

Bourke-Dunphy discloses,

“an interface is provided for identifying which components (system components) a user desires to install on one or more computers (desired system). An installation procedure is determined based on dependency requirements (checking) for components that are selected for installation. The installation procedure may describe a desired order and/or sequence for installing (prescribed manor) selected application and/or service components.”

“[T]urning to FIG. 8, the methodology begins at step 400 in which an installation planning process or method in accordance with an aspect of the present invention, is activated. The process proceeds to step 402 in which information is received about the computer (or computers) to which the installation relates. The computer information, for example, is provided in response to a corresponding user interface prompting the user to identify the computer(s) where the software is to be installed. The information, for example, may include a name or other identifying characteristics of each computer. The identified computer(s) may be stand-alone machines or interconnected within a common network domain. ...[A]t step 416, an installation procedure is provided based on the component selection data, such as presented at step 410. The installation procedure defines a step-by-step process that a user may follow to install the components (and associated subcomponents). The installation procedure further sets forth an installation order for each of the components being installed. When the software is to be installed across more than one computer, the installation procedure also may indicate the order in which each component is to be installed at each computer identified at step 402. For example, the installation order may be determined from an installation order file that enumerates necessary installation orders associated with the various components.” – See abstract, Fig. 1, associated text, and [0074] –[0079] with emphasis added.

Thus, Bourke-Dunphy discloses an interface component (i.e. user interface 12, Fig. 1) for entering desire system configuration information, wherein the interface component providing an installation procedure (i.e. installation procedure 18, FIG. 1) based on dependency requirements (dependency engine 14 , FIG. 1) for the plurality of components and wherein *the configuration information* includes information identifying selected components to be installed. The installation procedure identifies *an order for installing the selected components* on each of the plurality of computers. Bourke-

Dunphy also discloses a data structure based on the installation procedure that stores configuration information, such as which components are to be installed and where (e.g., which computer) such components are to be installed (paragraph [0027] of Bourke-Dunphy). The data structure 20 thus provides useful information that may be utilized during installation to automate at least part (i.e. "automatically checking and configuring specified installation, verification and/or configuration files"). For example, decisions relating to which components to install and where such components are to be installed may be automatically set by default to correspond to the information stored in the data structure 20 (paragraphs [0029] and [0033] of Bourke-Dunphy). The installation procedure further sets forth an installation order for each of the components being installed (paragraphs [0074] –[0079] of Bourke-Dunphy). Therefore, installation procedure and the data structure corresponds to the claimed "installation, verification and or configuration files" and the installation procedure and data structure used by system components to "automatically checking and configuring specified installation, verification and/or configuration files in a prescribed order and manner, such that the system components, when configured, form the system."

It is to note that, Bourke-Dunphy does not explicitly disclose, "'Data Management Unit" for Generating Software Packages for Installation in System Components', However, Hellerstein, in an analogous art, discloses,

"Computer-based methods and systems for performing automated distribution of a software package to one or more target machines in one or more regions of a distributed network of target machines, comprises the following steps. First, a base software package is prepared for each of the one or more regions based on at least one of: (i) policy data indicating which of the one or more regions are candidates for receiving the software package, (ii) dependency information indicating requisites for a

service provided by the software package, and (iii) configuration information for each of the candidate regions. The base software package is then distributed to each of the candidate regions of the distributed network. The base software package received at each of the candidate regions is then customized based on at least one of: (i) regional distribution policies, (ii) dependency information specific to one or more roles performed by the target machines in that region, and (iii) individual target machine configuration information. Lastly, the software package customized in each of the candidate regions is distributed to at least one of the target machines in the candidate regions of the distributed network. ...the basic service (software) package 504 is the component that is a candidate for installation in the appropriate target machines...when a region server, responsible for distributing a package to each of the end points within its domain, receives a base service package 522, it needs to augment it with specific dependency items that are needed by the individual machines within the region. This is done by a region package augmentor operation 520, which receives as input the regional distribution policies 528, the dependency information 524 specific to the machines in that region, and individual machine configuration information 526 that will be used to customize the base package for each of the target machines. The output is a set of customized packages 530 that is produced for each group of machines within the region, having the same installation environment. --See Hellerstein, at least Abstract, [0052], and [0053] with emphasis added.

Thus, it would have been obvious to one ordinary skill in the art at the time invention was made to use *customized package preparation* of Hellerstein on installation procedure 18 of *planning an installation system* of Bourke-Dunphy for automatically installation of the customized package to one or more computer within distribution network and ease the burden of installation from administrator or user as seen in Hellerstein (e.g. [0005] and [0010]).

As of the forgoing discussion, Bourke-Dunphy in view of Hellerstein does teach the above claim 1 limitation.

Furthermore, In response to Appellants' remarks incorporating the arguments presented in support of claims 1-16 (brief, page 10, last paragraph), the examiner refers to the reasoning set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Marina Lee/

Examiner, Art Unit 2197

Conferees:

/Li B. Zhen/

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